



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 28 2009

Colonel Andrew W. Backus
District Engineer
Norfolk District
U.S. Army Corps of Engineers
803 Front Street
Norfolk, Virginia 23510-1096

RE: CENAO-TS-REG Public Notice # 05-VR0222 (Tri-City Properties, L.L.C.)

Dear Colonel Backus:

The U.S. Environmental Protection Agency (EPA) reviewed the above referenced Public Notice and provided written comments to the Corps of Engineers on September 3, 2009. In that letter EPA stated the proposed project was inconsistent with CWA Section 404(b)(1) Guidelines and recommended that a permit to directly impact 29.8 acres of forested non-tidal wetlands be denied.

EPA is reaffirming that position. The wetlands on this parcel are part of a larger unique and valuable wetland ecosystem designated an aquatic resource of national importance (ARNI). Forested wetlands in southeastern Virginia are declining under increasing pressure from development. According to a recently published report, *Status and Trends of Wetlands in the Coastal Watersheds of the Eastern United States 1998 to 2004*, there was a continuing annual loss of 59,000 acres of wetlands in coastal watersheds of the Atlantic from 1998 to 2004. Eighty-two percent of these losses occurred in tidal marshes and forested wetlands up in the watersheds (Stedman, S. and T.E. Dahl. 2008). A key reason cited for these losses is the number of people living in and moving to coastal areas. Chesapeake is no exception to this trend. From 2000 to 2008 the city's population grew 10.5% compared to 9.7% for Virginia.

It is EPA's belief that the current proposed project will result in substantial and unacceptable adverse impacts to aquatic resources of national importance including Stumpy Lake, Gum Swamp, and the North Landing River Natural Preserve Area and watershed. Therefore, should the Corps of Engineers choose to issue a permit authorizing the fill of 29.8 acres of wetlands to construct this project, EPA reserves the option to elevate the decision in accordance with Section 404(q) of the Clean Water Act, and requests the Corps provide EPA with the appropriate notice of its intent pursuant to Part IV of the 1992 *Clean Water Act Section 404(q) Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army*.

EPA believes that other opportunities exist to avoid and minimize the substantial and unacceptable adverse impacts to the aquatic resources being proposed by this project. Should permit issuance remain an option, it is appropriate for the Corps of Engineers to develop an environmental impact statement. EPA looks forward to coordinating with you and your staff regarding additional information the applicant may provide.

Thank you for the opportunity to comment on this project. Should you have any questions or desire to discuss this matter further, please contact Mr. John R. Pomponio, Director, Environmental Assessment and Innovation Division, at (215) 814-2702.

Sincerely,



William C. Early
Acting Regional Administrator

CC: Ellen Gilinsky, Virginia Department of Environmental Quality
Dave Davis, Virginia Department of Environmental Quality
Kim Smith, US Fish and Wildlife Service
Catherine Libertz, US EPA Region III, Office of State and Congressional Relations
Amy Howell, US EPA Region III, Office of State and Congressional Relations

